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## **Introduction to the Symposium Issue on Listening to the World: New Ideas for Resolving Identity-Based Conflict**

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The symposium *Listening to the World: New Ideas for Resolving Identity-Based Conflict*, held at The Ohio State University Moritz College of Law in January 2006, was in many ways born of both frustration and optimism. At a general level, the frustration was with society's inadequate means of responding constructively to intractable conflicts among groups, conflicts that sometimes trigger violent confrontations. In many of these situations, the primary dispute resolution body—the court system—is not structured to deal effectively with deeply rooted social conflict. One response to this frustration is an optimistic comparative approach that looks at institutions in other settings for ideas about how to structure attempts to resolve such conflicts. This path, however, leads directly to another form of frustration. While much has been written about the nature of conflict and conflict resolution, little of this literature contains the type of detailed analysis that is helpful for a systems design perspective. A comparative approach to conflict resolution design requires specific information about both how institutions function and the social context in which they function. At the most basic level, what explains the formation of an institution? What are its values and goals; its structure; its methods? Few case studies provide the detail necessary to understand these elements and thus to allow meaningful comparisons across contexts.

The symposium was designed to stimulate the publication of the type of case studies that would be helpful for dispute resolution design. Participants gathered to discuss case studies at an important flashpoint for inter-group conflict: police-community relations. The setting was both interdisciplinary and international as scholars with perspectives from law, sociology, political science, anthropology, criminology, and international relations analyzed cases of conflict resolution in police-community relations in the United

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States, Northern Ireland, Israel, and South Africa. Participants hoped that an examination of similarities and differences in context and design might yield new insights that would expand our understanding of available problem-solving processes.

In addition to the authors represented in this Volume, the symposium included presentations by Ellen Deason and Amy Cohen (The Ohio State University Moritz College of Law), who provided a comparative overview of goals and methods of dispute system design; Michelle Alexander (Moritz College of Law), who spoke on key social problems involved in domestic police-community relations; and Ntsikelelo Joseph Sandi (a former member of South Africa's Truth and Reconciliation Commission) and Gareth Newham (Center for the Study of Violence and Reconciliation), who described the evolution of police-community relations in post-apartheid South Africa.

The day concluded with a roundtable discussion among the presenters facilitated by Nancy Hardin Rogers (Moritz College of Law), Jacqueline Nolan-Haley (Fordham University School of Law), and Cathy Costantino (Federal Deposit Insurance Corporation). Drawing on the panel discussions, participants identified important lessons, gaps, and questions for the future of dispute resolution institution-building in the United States.

This symposium could not have taken place without the contributions of many people. Dean Nancy Rogers of the Moritz College of Law conceived the project and sustained its momentum. Major funding was provided by the William and Flora Hewlett Foundation, with additional financial support by The Ohio State University Office of International Affairs. The *Ohio State Journal on Dispute Resolution* staff and board members, ably led by symposium co-chairs Laura Weidner and Michael Spencer, organized and presented the event.

This volume contains a significant number of the case studies presented at the symposium. Many of the authors regard police-community relations as fraught with identity-based conflict in which identity is constructed through and against experiences of exclusion, victimization, and mislabeling and is expressed in social narratives, symbols, and ritual. Against this backdrop, one way to organize the case studies is by examining the extent to which an institution seeks to create new social, political, and cultural norms for police-community interaction as compared to the extent it emphasizes resolving

immediate concrete disputes.<sup>1</sup> Many of the institutional innovations described here combine these short- and long-term aims to varying degrees.

Sandra Cheldelin is interested in the possibility of narrative and dialogue to create new norms by triggering changes in individual and group attitudes and behaviors.<sup>2</sup> According to Cheldelin, our identities—formed in relation to social expectations and repeated and internalized narratives—are reinforced or destabilized when they are accepted, challenged, or even named by others as we position ourselves in social networks. She uses this framework to explore the benefits of dialogue: (1) to transform identity-based conflict that manifested itself in troubled police-community relations in and around Washington, DC following the 9/11 terrorist attacks; and (2) to change the culture of law enforcement by creating a strategy for victim-oriented policing.

Cheldelin describes a series of eight facilitated community dialogues among diverse citizen and law enforcement participants that the George Mason University Institute for Conflict Analysis and Resolution and Fairfax County Community Mental Health organized around topics such as nationalism, patriotism, safety, and policing. She also describes a series of forums, convened by the International Association of Chiefs of Police and the U.S. Department of Justice, that led to a national strategy for policing designed to respond to the needs of victims and survivors of violent crimes. In both contexts, Cheldelin endorses a dialogic process that offers participants who experience victimization the space to “change the storylines by rejecting the attributions and providing alternative ways of framing what was happening” to them.<sup>3</sup>

David Weisburd and Hagit Lernau also analyze a conflict at the societal level, but rather than emphasizing interpersonal change, they explore the complex relationship between beliefs and violent action.<sup>4</sup> They offer a cogent explanation for why there was so little violence in the 2005 withdrawal of Jewish settlers from the Gaza Strip even though these settlers held radical beliefs that justified and encouraged violence. Weisburd and Lernau’s survey documents that many ordinary settlers who faced evacuation expressed

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<sup>1</sup> Amy J. Cohen & Ellen E. Deason, *Comparative Considerations: Toward the Global Transfer of Ideas About Dispute System Design*, DISP. RESOL. MAG., Spring 2006, at 23–26.

<sup>2</sup> Sandra I. Cheldelin, *Engaging Law Enforcement and Victims in Dialogue: From Conflict to Shared Understanding*, 22 OHIO ST. J. ON DISP. RESOL. 9 (2006).

<sup>3</sup> *Id.* at 32.

<sup>4</sup> David Weisburd & Hagit Lernau, *What Prevented Violence in Jewish Settlements in the Withdrawal from the Gaza Strip: Toward a Perspective of Normative Balance*, 22 OHIO ST. J. ON DISP. RESOL. 37 (2006).

strong ideological commitments to a religious worldview that places the retention of the land of Israel above all other religious injunctions—even the prohibition against murder—and thus legitimates violence. Yet many of these settlers nonetheless described violence as an illegitimate means to prevent the Israeli police and military from evacuating the settlements.

To explain this seeming contradiction, Weisburd and Lerna propose the operation of a system of norms that discourages violence against other Jewish Israelis and constrains unlawful behavior. This system of norms thus acts to “balance” what is otherwise a natural predilection toward political violence.<sup>5</sup> What Weisburd and Lerna describe as “normative balance” in turn rests on a strong social network that ties Israeli settlers to the Israeli polity and state (as “brothers” or as the “Jewish people”), which was reinforced by the emphasis the police and army placed on the connections that bind them to the settlers (for example, the police did not carry arms into the settlements or react to insults or threats).<sup>6</sup> At the level of institutional design, Weisburd and Lerna’s research suggests attention to theories of contact or engagement; namely, to building civic or ethnic associations between groups with radical ideologies and the larger society, rather than attempting to change or diffuse radical beliefs.

In Pasadena, California, the Western Justice Foundation is working to establish mechanisms both to transform social relationships and to resolve particular citizen-police disputes. Najeeba Syeed-Miller describes a project that began with facilitated dialogue among police and different groups of community members and evolved to include a mediation mechanism for individual complaints against police officers.<sup>7</sup> She emphasizes the identity-based character of police-community conflict that triggers deeply held beliefs about culture, language, and nationality, and describes interventions focused on the relations between the police and specific linguistic, ethnic, national, or racial groups. Among the process features she highlights for these interventions are attention to language and appearance (for example, police uniforms reinforce a divide between police and community members); using stakeholder input to design the intervention and to conceptualize the conflict

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<sup>5</sup> *Id.* at 65–72. Here Weisburd and Lerna’s analysis draws on Edwin Sutherland’s theory of differential associations and crime, which recognizes that individuals are confronted with many different countervailing influences. See EDWIN H. SUTHERLAND & DONALD R. CRESSEY, *PRINCIPLES OF CRIMINOLOGY* 77–100 (7th ed. 1966).

<sup>6</sup> Weisburd & Lerna, *supra* note 4, at 65–72.

<sup>7</sup> Najeeba Syeed-Miller, *Developing Appropriate Dispute Resolution Systems for Law Enforcement and Community Relations: The Pasadena Case Study*, 22 OHIO ST. J. ON DISP. RESOL. 83 (2006).

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(including civilian oversight to monitor civil rights in the mediation process); and ensuring that participation is voluntary.

Jay Rothman highlights how the institutional setting for dispute resolution affects the extent to which a process can be transformative. He examines how a process of participatory problem assessment and goal setting led to a historic collaborative agreement designed to chart a new course for community-police relations in Cincinnati, Ohio.<sup>8</sup> Like Cheldelin and Syeed-Miller, Rothman characterizes the conflict as identity-based; both sides perceived the conflict as attacks on their sense of self and dignity. Unlike the more preventative settings for dispute resolution that Cheldelin and Syeed-Miller describe, however, the Cincinnati process was spurred by litigation and crisis; there were allegations in federal court of racial profiling and police abuse of African-Americans followed by the shooting and subsequent death of an unarmed African-American youth. Rothman describes a court-ordered intervention that engaged 3,500 community members in nine months of data gathering and goal setting through focus groups, questionnaires, and public deliberation that informed the work of lawyer-negotiators and resulted in a binding class action settlement.

The federal judge who ordered a collaborative approach recognized the need to address the social conflicts at the core of the case, and Rothman credits that wisdom. He also notes the advantages of the court order in bringing the city of Cincinnati and the police union to the table. Yet the court context for the dispute, which Rothman describes as “a combination of a blessing and a problem,”<sup>9</sup> restricted the goals and methods of the collaborative process. The circumstances resulted in a process that he criticizes as goal-oriented rather than problem-defining because it did not address the history of underlying distrust and poor race relations in Cincinnati. And Rothman charges that the process returned to its adversarial roots in the final lawyer-driven negotiation of the Collaborative Agreement and with the emphasis on compliance in the implementation of the agreement. Yet despite what Rothman sees as an outcome-orientation, he also highlights the establishment of the Cincinnati Community Police Partnering Center as a hopeful sign that the Collaborative Agreement was only the start of the process to establish relationships of respect and trust.

Building on these themes of dialogue, Michael Hamilton and Dominic Bryan examine to what extent and under what conditions dispute resolution

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<sup>8</sup> Jay Rothman, *Identity and Conflict: Collaboratively Addressing Police-Community Conflict in Cincinnati, Ohio*, 22 OHIO ST. J. ON DISP. RESOL. 105 (2006).

<sup>9</sup> *Id.* at 110.

institutions can contribute to democratic dialogue and consensus-building.<sup>10</sup> They examine the Northern Ireland Parades Commission (the Commission), which was established in 1997 following failures of police interventions in highly public and violent disputes among Catholic and Protestant communities during what is called the “marching season” in Northern Ireland. They propose a procedural conception of dispute system design that seeks—through a process of framing the conflict and bargaining for a sustainable agreement—to establish a mutually reinforcing relationship between strengthening democratic institutions and strengthening democratic culture. Using a Habermas-infused conception of public dialogue as a benchmark for reform, Hamilton and Bryan analyze the Commission as “an example of a ‘procedural device’ that might facilitate the emergence of background consensus and the culling of oppositional preferences.”<sup>11</sup>

Structurally, Hamilton and Bryan emphasize the Commission’s many hybrid institutional features. For example, it operates “between civil society and the institutions of government”<sup>12</sup> and attempts to draw its legitimacy from both its independence and the balanced representativeness of its appointed members. Moreover, the Commission and its authorized officers discharge multiple functions: decentralized mediation, information-gathering, and, in the event consensus cannot be reached, adjudication. Hamilton and Bryan examine and critique how the goals, structure, and methods of the Commission have led to: (1) attention to immediate disputes versus more systemic social, political, and cultural change; (2) an emphasis on fostering engagement as a means to improve community relations rather than on defining human rights to frame the conflict and the negotiations; and (3) mixed messages about the neutrality of the mediators and the confidentiality of the process.

Hamilton and Bryan credit the Commission with bringing reform to policing, facilitating more meaningful discussions of contentious public events, and maximizing the potential for pragmatic accommodations that avoid violence. Yet, notwithstanding these successes, they conclude with disappointment that the Commission’s contribution to deepening democracy has fallen short: due to its institutional design, the Commission has not done enough either to create consensus about the public interest or to encourage genuine dialogue through the mediation process.

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<sup>10</sup> Michael Hamilton & Dominic Bryan, *Deepening Democracy? Dispute System Design and the Mediation of Contested Parades in Northern Ireland*, 22 OHIO ST. J. ON DISP. RESOL. 133 (2006).

<sup>11</sup> *Id.* at 140.

<sup>12</sup> *Id.* at 153.

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Finally, toward the individual dispute resolution end of the spectrum, Raymond Patterson depicts how mediation has been incorporated into the function of the New York City's Civilian Complaint Review Board.<sup>13</sup> While most complaints are investigated, mediation services are offered on a voluntary basis to the complainant and the officer as an alternative. If both agree to participate, they can opt to reach a written or oral agreement that terminates the complaint and the investigation. Patterson's practical piece offers strategies to overcome both officers' and complainants' resistance to mediation as well as insights into the everyday trials of scheduling, staffing skillful and qualified mediators, training investigators to become advocates for the mediation process, and, in fact, resolving their own disputes with the police commissioner (and other stakeholders) over practice and policy—in particular determining what kinds of complaints are suitable for mediation.

What emerges from these case studies is an optimistic view of dispute resolution institutions as capable of facilitating contact across divergent groups and even of changing some of the attitudes, beliefs, and values held by group members. The image of dispute resolution institutions presented here is complex: many exhibit hybrid, even contradictory features, and many operate at the intersection between the state and civil society. Yet perhaps the most valuable theme that emerges from the articles as a whole is the importance of attending to the specific characteristics of an institution in order to understand not only how it works, but how it achieves its goals in context. Scholars of dispute system design will benefit from the rich detail that can be gleaned from the articles in this symposium Volume of the *Ohio State Journal on Dispute Resolution*.

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<sup>13</sup> Raymond W. Patterson, *Resolving Civilian-Police Complaints in New York City: Reflections on Mediation in the Real World*, 22 OHIO ST. J. ON DISP. RESOL. 187 (2006).

